

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 866 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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BHAVANBHAI SURMALBHAI

Versus

STATE GOVERNMENT

Appearance:

MR SG UPPAL for the appellant
Mr.Y.F.Mehta, LAPP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 13/01/97

ORAL JUDGEMENT(N.J.Pandya,J.)

The incident happened on 4-2-1988 between 8 p.m. and 9.00 p.m. when the accused-appellant is said to have given fatal blows to his wife with Dharia and thereafter, presented himself with the weapon which was dripping with blood at the police station of Balasinor Taluka. The incident happened at Libarwada village. The reason, as stated in the statement given by the petitioner-himself produced ultimately at exh.30, reveals that the wife had uttered insulting words indicating that the accused-appellant may sleep with his own mother. It seems that the husband was suspecting fidelity of his wife.

2. The matter, finally, came up before the learned Additional Sessions Judge of Kheda at Nadiad as Sessions Case No.129 of 1988, where by judgment dated 18-8-1988 the learned Judge was pleased to convict the accused for offence under Sec.302 I.P.C. and the accused was awarded

life imprisonment.

3. Once the homicidal death of a person is established and if the prosecution succeeds in establishing the intention to kill, obviously, the act will fall into the provisions of Sec.300 IPC resulting into conviction under Sec.302 thereof. Once we are considering applicability of Sec.300, the entire Section has to be borne in mind and the very first exception refers to the deprivation of his control on account of grave and sudden provocation and that situation resulting into death of a person who is responsible to create this situation.

4. In the instant case, the aforesaid utterance on the part of the deceased-wife of the accused would certainly amount to that and having heard this insult, he insisted upon his wife to repeat it, which she did and thereafter, the accused committed the deed. In our opinion, though the conviction has to result into the charge against the accused, but not under Sec.302 IPC but under Sec.304 Part I.

5. Accordingly, the appeal is partly allowed. The conviction is altered to the one under Sec.304 Part I in place of Conviction under Sec.302 IPC. So far as sentence is concerned, in place of life imprisonment, 10 years R.I. is awarded. Whatever sentence he has undergone so far, will be computed and will be accounted for against the sentence awarded by this judgment. Balance he shall undergo under this order.

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